

[Federal Register: April 25, 2001 (Volume 66, Number 80)]
[Proposed Rules]
[Page 20770-20778]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr25ap01-17]

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 159

[CGD17-01-003]
RIN 2115-AG12

Discharge of Effluents in Certain Alaskan Waters by **Cruise Vessel**
Operations

AGENCY: Coast Guard, DOT

ACTION: Notice of proposed rulemaking

SUMMARY: The Coast Guard proposes regulations regarding sewage and graywater discharges from certain **cruise** vessels transiting applicable waters of Alaska. Operators of **cruise** vessels carrying 500 or more passengers and transiting applicable waters of Alaska are restricted in where they may discharge effluents and would be required to perform testing of sewage and graywater discharges and maintain records of such discharges. The Coast Guard would inspect, monitor, and oversee this process to ensure compliance with applicable water quality laws and regulations.

DATES: Comments and related material must reach the Coast Guard on or before May 25, 2001.

ADDRESSES: You may mail comments and related material to the Commander Seventeenth Coast Guard District (m), P.O. Box 25517, Juneau, AK, 99802-5517, or deliver them to room 751 of the Federal Building in Juneau, AK between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 907-463-2802. You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Coast Guard Seventeenth District (m) Secretary maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 751, U.S. Coast Guard Seventeenth District (m), between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Spencer Wood, Seventeenth

District (moc), 907-463-2809.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD17-01-003), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and related material in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

We are using 30-day comment period for this rulemaking. Due to the localized interest in this proposed regulation, we feel that this comment period will allow all interested parties enough time to file comments with the Coast Guard. Additionally, because the Alaska **cruise** season is seasonal, a shorter comment period is needed in order to allow for publication of a Final Rule before the 2001 season ends in mid-September.

[[Page 20771]]

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the docket at the address under ADDRESSES explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

Background and Purpose

Congress passed ``Title XIV--Certain Alaskan **Cruise** Ship Operations'' of the Miscellaneous Appropriations Bill (H.R. 5666) on December 21, 2000 in the Consolidated Appropriations Act of 2001 (P.L. 106-554) [``Title XIV''] in response to public concern with environmental impacts of **cruise** vessels on Alaska waters. This legislation was drafted in the wake of past incidents of illegal wastewater discharges, the discovery of high levels of fecal coliform in legal discharges of treated sewage and graywater, the projected growth of the industry, and the trend within the industry towards larger vessels that carry over 5000 people. In December of 1999, a task force comprised of representatives from the federal government, State government, the **cruise** industry, and environmental groups was established to develop voluntary procedures for sampling and analyzing wastes generated by **cruise** vessels while operating in Alaska's waters during the 2000 **cruise vessel** season.

During the summer 2000 **cruise** season, the relevant segment of the **cruise** industry voluntarily agreed not to discharge treated sewage or

graywater while in port, not to discharge garbage or untreated sewage in Southeast Alaska's ``Donut Holes'' (bodies of water greater than three miles from any shoreline yet within Alaska's inside passage), and not to discharge treated sewage or graywater, unless more than 10 miles from port and proceeding at a speed of not less than 6 knots.

Additionally, a voluntary sampling and testing protocol and Quality Assurance/Quality Control Plan (QA/QPC) for treated sewage and graywater were developed. The protocol and QA/QPC were applied to 21 **cruise** vessels calling on Alaska ports during the 2000 season.

The test results revealed that the majority of the vessels' discharges, both treated sewage and graywater, exceeded marine sanitation device (MSD) design standards for water quality of 200 fecal coliform per 100 milliliters and 150 milligrams per liter total suspended solids (TSS). The high levels of fecal coliform and TSS found in treated sewage indicate that the MSDs used by **cruise** vessels may not be operating properly or functioning as designed. The Coast Guard boarded 15 vessels as a result of high fecal coliform and TSS levels. Five vessels were found to have evidence of improperly functioning MSDs. The source of the high fecal coliform and TSS found in graywater has yet to be positively determined.

Concurrent with this voluntary sampling process, Congress was drafting legislation that addressed sewage and graywater discharges in Alaska's waters and sought to close the ``Donut Holes'' located in Southeast Alaska's Inside Passage to untreated sewage discharge. This legislation was enacted into law on December 21, 2000, as part of the Consolidated Appropriations Act of 2001 in the form of Title XIV.

These proposed regulations are in response to Title XIV statutory mandate to draft implementing regulations. Section 1406 of Title XIV directs the Secretary to incorporate into the commercial **vessel** examination program an inspection regime sufficient to verify that operators of **cruise** vessels carrying 500 or more passengers and visiting ports in the State of Alaska or operating in the applicable waters of Alaska are in full compliance with the environmental record keeping and equipment requirements of Title XIV, the Federal Water Pollution Control Act, as amended, and any regulations issued there under, other applicable Federal laws and regulations, and all applicable international treaty requirements. The applicable waters of Alaska are defined as the waters of the Alexander Archipelago, the navigable waters of the United States within the State of Alaska, and the Kachemak Bay National Estuarine Research Reserve.

Discussion of Proposed Rule

This rule would establish a regime for documentation and testing of treated sewage and graywater effluent as prescribed by Title XIV. The rule would apply to **cruise** vessels that carry at least 500 passengers, and operate in the navigable waters of the United States within the State of Alaska. This area extends out three nautical miles from the shore along any portion of land that is included within the jurisdiction of the State of Alaska. The rule also would apply to the same class of **cruise** vessels that operate in the Alexander Archipelago and the Kachemak Bay National Estuarine Research Reserve. The area designated as ``The Alexander Archipelago'' is defined in this proposed rule at Sec. 159.305. The definition closes areas of the Archipelago

that would otherwise be open to dumping of untreated sewage. The rule would not affect normal transit through the designated areas. The rule would not apply in an emergency situation that threatens the safety of the **vessel** or its passengers.

Under this rule **cruise** vessels would maintain a Sewage and Graywater Discharge Record Book while operating in the applicable waters of Alaska. The content of the record book is designed to enable appropriate Coast Guard oversight of sewage and graywater handling practices and ensure compliance with Title XIV. The prescribed format is intended to facilitate both the entry of data, as well as the review of data by the Coast Guard. The Coast Guard is interested in input from the **cruise** industry and interested members of the public on any additional information that should be included in the Sewage and Graywater Discharge Record Book to enhance data collection and interpretation of sample test results.

This rule would prohibit the discharge of untreated sewage within the designated areas. It also provides for sewage and graywater discharge effluent standards, and establishes an interim treated sewage standard. To discharge treated sewage and graywater while in the applicable waters of Alaska, a **cruise vessel** would need to be underway at a speed of at least 6 knots and be at least one nautical mile from the nearest shore. Further, the **vessel's** discharge would need to comply with all applicable effluent standards, including those contained within this rule. Lastly, the **vessel** could not be in an area where such discharge is prohibited. There are currently no areas within the applicable waters of Alaska that have been designated as an area where such discharge is prohibited.

The rule also would allow for discharges of treated sewage and graywater inside of one mile from shore and at speeds less than six knots for vessels with effluent treatment systems that can treat sewage and graywater to a much stricter standard. To employ this provision a **vessel** would have to provide 30 days notice of the intended discharge to the appropriate Captain of the Port (COTP). In the notice the **vessel** would verify that the effluents it intends to discharge meet the minimum fecal coliform and residual chlorine standards listed in 159.307(b) of this rule and the standards set forth in 40 CFR 133.102. To satisfy these standards the **vessel** would provide to the COTP the test results of 5 samples taken over a 30-day period that meet the requirements. Further, for a **vessel** to

[[Page 20772]]

use this exemption it would have to demonstrate its continued compliance with this proposed rule by sampling and testing for conventional pollutants, as defined in 40 CFR Part 401.16, periodically as determined by the COTP and in accordance with the **cruise vessel's** Quality Assurance/Quality Control Plan (QA/QCP).

To ensure a viable sampling regime it is necessary to conduct sampling in accordance with a thorough and well developed QA/QPC with **Vessel Specific Sampling Plan (VSSP)**. These documents would define the **vessel**, sampler, and laboratory's responsibilities in the process of discharge sampling and analysis to ensure the results are timely and accurate. The **vessel** owner/operator, and/or subcontracted sampling team and laboratory, using the outline in the regulation as a minimum

standard, may craft the plans. Sample plans may be obtained from the Seventeenth Coast Guard District (moc) office or the Coast Guard Marine Safety office in Juneau, Alaska. Under the proposed rule the Coast Guard will review and either accept or reject the plans, and determine when and from which sampling ports samples will be drawn. In accordance with the accepted plans, a third party, contracted by the **cruise vessel**, would conduct the sampling and deliver the samples to a laboratory for analysis.

Between 30 and 120 days prior to coming into the applicable waters of Alaska, **cruise vessel** owners/operators would self certify that the **vessel**'s effluents meet the minimum standards established by the Administrator of the Environmental Protection Agency. In the absence of such standards they would certify that they meet the minimum standards described in this rule. Title XIV provides for the Administrator to establish minimum effluent standards for treated sewage and graywater, but does not mandate that they do so. In the event the Administrator does establish effluent standards, they would supersede the standards listed in this rule. If a **vessel** is not able to certify their effluents for treated sewage and graywater as meeting the applicable standards, operational controls would be placed on the **vessel** by the COTP, directing the **vessel** not to discharge treated sewage and graywater in the applicable waters of Alaska.

A **cruise vessel** can expect to be sampled a minimum of two times while operating in the applicable waters of Alaska during a calendar year: Once, within 30 days after first arriving at the start of the **cruise** season, and a second sometime during the remainder of the **vessel**'s **cruise** season. During either of the two sampling events, additional samples may be drawn from randomly selected discharge ports for priority pollutant analysis.

The proposed rule would allow for additional sampling, at the discretion of the COTP to ensure continued compliance throughout the operating season and to follow-up on high-test sample results.

All costs associated with compliance with this proposed rule will be paid by the **cruise** vessels operating in the applicable waters of Alaska, except for costs of oversight and enforcement by the Coast Guard.

Tests results for the samples would be forwarded to the COTP directly by the laboratory conducting the analysis. The time schedule specified in the rule is an industry standard for laboratories qualified to complete the analysis. The laboratory will hold the samples for six months in the case of disputed results. After six months the samples become unusable for any further beneficial analysis and should be discarded.

The reports the laboratory must submit on sample test results may be in an electronic form. However, if submitted electronically, they must be in a format readable by the Coast Guard and Alaska Department of Environmental Conservation's (ADEC) data systems. Currently, the Coast Guard and ADEC use a Windows operating system.

Finally, the proposed rule sets out the penalties that might be assessed if a **cruise vessel** is found discharging effluent that does not meet the applicable standards.

Regulatory Evaluation

This interim rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT follows:

A Quality Assurance/Quality Control Plan (QA/QCP) with **Vessel Specific Sampling Plan (VSSP)** is required by these regulations to establish procedures for collecting and analyzing treated sewage and graywater samples from **cruise** vessels. During the summer 2000 voluntary **cruise vessel** sampling program a single QA/QCP, acceptable to the Coast Guard, was used by all 21 **cruise** vessels. A VSSP was then developed for each **vessel**. It is anticipated the same, or similar depending on the laboratory used, QA/QCP and VSSP will be used for subsequent summer **cruise vessel** seasons negating the need to develop new ones. The Coast Guard is not able to estimate the burden that may be associated with individual **cruise vessel** revisions to the QA/QCP and VSSP, if any.

The annual burden of creating and maintaining a Sewage and Graywater Discharge Record Book on 23 **cruise** vessels is expected to be \$460. This estimate is for the cost of purchasing a record book and maintaining it onboard each **vessel**. Entries into the record book should be made during the normal routine of the engineering watch so no additional labor costs are expected.

During the summer 2000 **cruise vessel** voluntary sampling program, the **cruise** industry operating in Alaska spent an estimated \$65,000 on sampling of **cruise** vessels while underway. An additional estimated \$150,000 was spent in having the samples analyzed for conventional pollutants and the complete suite of priority pollutants listed in 40 CFR 401.15. The summer 2000 sampling program included two separate sampling events on 21 **cruise** vessels from all overboard treated sewage and graywater effluents and marine sanitation devices. In addition to the conventional pollutant suites, one of the two sampling events included samples drawn for a complete suite of priority pollutants analysis.

These regulations provide for a similar sampling and analysis regime with cost savings in some areas and offsetting cost increases in others. While the number of more costly priority pollutants analysis will decrease, the number of overall sampling events for conventional pollutants will likely increase. Also, the number of respondents is expected to increase from 21 to 23. Therefore, the annual burden for sampling and analysis under these regulations is estimated to be \$215,000. When divided by the number of participants, the annual cost to each individual **vessel** is estimated to be \$9,348. The estimated cost to each **cruise vessel** line is as follows:

Cruise line	Vessels	Cost
Princess Cruises.....	6	\$56,088
Holland American.....	6	56,088
Celebrity.....	2	18,696
Norwegian.....	2	18,696

Royal Caribbean.....	2	18,696
Carnival.....	1	9,348
Japan.....	1	9,348
World Explorer.....	1	9,348
Crystal Cruises.....	1	9,348

[[Page 20773]]

Radisson Seven Seas.....	1	9,348
--------------------------	---	-------

The cost is based on two sampling events on each **cruise vessel**. One sample event would be required within 30 days of entering Alaska waters. The second sample event, although discretionary by the Coast Guard, will be taken from vessels that visit Alaskan waters at least four times a year. Additional samples and analysis may be required, along with the associated cost increase, should the initial sample results indicate noncompliance.

The Coast Guard is not able to estimate the costs that might be incurred if a **cruise vessel** cannot certify that their discharges meet the applicable standards, and does not have the capacity to hold all of its discharges while transiting the applicable waters of Alaska. In that scenario, it is believed that the **cruise vessel** would need to alter its **cruise** itinerary in order to leave the applicable Alaskan waters and enter the high seas, thus enabling the **vessel** to discharge. We would appreciate any comments that might help us accurately assess these costs.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ``small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This is due to the fact that the **cruise** vessels that would be subject to this proposed rule will be carrying 500 or more passengers. Typically, these **cruise** vessels are owned by corporations that do not qualify as small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better

evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LCDR Spence Wood where listed at FOR FURTHER INFORMATION CONTACT.

Collection of Information

This rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). As defined in 5 CFR 1320.3(c), ``collection of information'' includes reporting, record keeping, monitoring, posting, labeling, and other, similar actions. The title and description of the collections, a description of the respondents, and an estimate of the total annual burden follow. Included in the estimate is the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Discharge of Effluents in Certain Alaskan Waters by **Cruise Vessel** Operations.

Summary of the Collection of Information: The following information will be required to be collected by these regulations:

Quality Assurance/Quality Control Plan (QA/QCP) with **Vessel** Specific Sampling Plan (VSSP).

Sewage and Graywater Discharge Record Book.

Sewage and graywater sampling test results.

Need for Information: Compliance and enforcement of ``Certain Alaskan **Cruise** Ship Operations'' (P.L. 106-554).

Proposed Use of Information: Regulatory oversight and compliance assurance.

Description of the Respondents: Master or other person having charge of each **cruise vessel** authorized to carry 500 or more passengers while operating in the waters of the Alexander Archipelago and the navigable waters of the United States within the State of Alaska and within the Kachemak Bay National Estuarine Research Reserve.

Number of Respondents: 23

Frequency of Response: Periodically while operating in the waters described above.

Burden of Response: There are three separate record keeping requirements involved in this regulation. Each is addressed separately, and the estimated total burden follows:

1. Quality Assurance/Quality Control Plan (QA/QCP) with **Vessel** Specific Sampling Plan (VSSP) development costs. A QA/QCP with VSSP is required by these regulations to establish procedures for collecting and analyzing treated sewage and graywater samples from **cruise** vessels. During the summer 2000 voluntary **cruise vessel** sampling program, a single QA/QCP acceptable to the Coast Guard, was used by all 21 **cruise** vessels. A VSSP was then developed for each **vessel** and sampling was conducted in compliance with these documents. It is anticipated the same, or similar, QA/QCP and VSSP will be used for subsequent summer **cruise vessel** seasons negating the need to develop a new QA/QCP or VSSP. The Coast Guard is not able to estimate the burden that may be associated with individual **cruise vessel** revisions to the QA/QCP or

VSSP, if any.

2. Sewage and Graywater Discharge Record Book costs. The annual burden of creating and maintaining a Sewage and Graywater Discharge Record Book on 23 **cruise** vessels is expected to be \$460. This estimate is for the cost of purchasing a record book and maintaining it onboard each **vessel**. Entries into the record book should be made during the normal routine of the engineering watch so no additional labor costs are expected.

3. Sample collection and analysis costs.

a. During the summer 2000 **cruise vessel** voluntary sampling program, the **cruise** industry operating in Alaska spent an estimated \$65,000 on sampling of **cruise** vessels while underway. An additional estimated \$150,000 was spent in having the samples analyzed for conventional pollutants and the complete suite of priority pollutants listed in 40 CFR 401.15. The summer 2000 sampling program included two separate sampling events on 21 **cruise** vessels from all overboard treated sewage and graywater effluents and marine sanitation devices. In addition to the conventional pollutant suites, one of the two sampling events included samples drawn for a complete suite of priority pollutants analysis.

These regulations provide for a similar sampling and analysis regime with cost savings in some areas and offsetting cost increases in others. While the number of more costly priority pollutants analysis will decrease, the number of overall sampling events for conventional pollutants will likely increase. Also, the number of respondents is expected to increase

[[Page 20774]]

from 21 to 23. Therefore, the annual burden for sampling and analysis under these regulations is estimated to be \$215,000. When divided by the number of participants, the annual cost to each individual **vessel** is estimated to be \$9,348.

Estimated Total Annual Burden: The estimated total annual burden is \$215,460.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Coast Guard has submitted a copy of this rule to OMB for its review of the collection of information.

The Coast Guard solicits public comment on the collection of information to: (1) Evaluate whether the information is necessary for the proper performance of the functions of the Coast Guard, including whether the information will have practical utility; (2) Evaluate the accuracy of the Coast Guard's estimate of the burden of the collection, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection on those who are to respond, as by allowing the submittal of responses by electronic means or the use of other forms of information technology.

Persons submitting comments on the collection of information should submit their comments both to OMB and to the Coast Guard where indicated under ADDRESSES by the date under DATES.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. Before the requirements for this collection of information become effective, the

Coast Guard will publish a notice in the Federal Register of OMB's decision to approve, modify, or disapprove the collection.

Federalism

Under Executive Order 13132, section 3(b), the Coast Guard finds that a program monitoring effluent discharge from **cruise** ships transiting certain Alaskan waters is in the national interest, as evidenced by Congress in enacting ``Title XIV--Certain Alaskan **Cruise** Ship Operations'' as part of the Consolidated Appropriations Act of 2001 (Public Law 106-554). In that legislation, Congress empowered the Coast Guard to monitor wastewater discharges from **cruise** ships transiting certain Alaskan waters.

The sampling, testing and log-keeping program outlined in this regulation was taken from a similar program that was run on a voluntary basis during the summer of 2000. That program was one of the results of the Alaska **Cruise** Ship Initiative, which grew out of a working group composed of representatives from the **cruise** industry, the public, environmental groups, and state and federal government. The Coast Guard was one of the federal government representatives on that group. The working group was begun by the Commissioner of the Alaska Department of Environmental Conservation (ADEC) in December of 1999.

At the conclusion of the 2000 Alaskan **cruise** ship season, data from the voluntary wastewater sampling and testing program showed that none of the tested vessels were in full compliance with all federal performance standards for the discharge of treated sewage. This data, as well as data showing high levels of pollutants in graywater, spurred the legislation cited above. It also spurred a meeting between the Alaska governor, ADEC, the Coast Guard, and members of the **cruise** ship industry in November of 2000. At this meeting, the governor expressed his approval of the then-proposed Title XIV, and the greater authority it granted to the Coast Guard to protect Alaskan waters from pollutants.

This established cooperation between the Coast Guard and the State of Alaska, and the State's support of the legislation and voluntary testing program on which the regulation is based shows how the Coast Guard has consulted with State officials in accordance with Executive Order 13132, Section 3(b). The Coast Guard will continue to consult the State by sharing the results of sample tests with the State, as well as requiring that discharge logbooks be kept in a format readable by the Alaskan Department of Environmental Conservation.

Section 6(c)(2) of Executive Order 13132, requires, that if the agency promulgating the regulations intends that they have preemptive effect, it state that intention and the rationale on which it is based. Accordingly, the following statement is provided:

Section 1411 (b) P.L. 106-554 specifies that, ``[n]othing in this Title shall in any way affect or restrict, or be construed to affect or restrict, the authority of the State of Alaska or any political subdivision thereof--(1) to impose additional liability or additional requirement; * * *.''' This language, as well as the entire Title, is identical to suggested text submitted to Congress by the Department of Transportation as part of a draft Coast Guard Authorization Act of 2000. While the Coast Guard Authorization Act of 2000 did not pass, the provisions of Title XIV--Certain Alaskan **Cruise** Ship Operations did

become law in P.L. 106-554. The Department of Transportation's letter transmitting the Administration's proposed alternative, which eventually became Title XIV of P.L. 106-554, contained an explanation of Section 1411, as follows:

There are a number of provisions in the Administration's substitute language that would benefit from guidance in a conference report. In particular, we would like to draw the Conferees attention to Section 715 [1411] of the Administration's proposed alternative to Title VII of H.R. 820, as adopted by the Senate, which contains the 'Savings Clause.' In its drafting efforts, the Administration modeled section 715 [which is identical to Section 1411] after Section 1018 of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2718. Section 1018 of OPA was recently interpreted by the U.S. Supreme Court in the case of U.S. v. Locke, 120 S. Ct. 1135 (Mar. 6, 2000). The case concerned Washington State efforts to regulate oil tankers. The Court held that OPA section 1018 does not alter the preemptive impact of the Federal regulatory regime in the areas of design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, manning and casualty reporting for vessels. It is the intent of the Administration that section 715 be interpreted in the same manner as OPA section 1918, so that future litigation on the subject of Federal preemption of **vessel** regulation can be avoided.

Accordingly, these interim rules are construed in the same manner described in the Department of Transportation's views letter cited above. Thus, any of these regulations, which have the effect of regulating a **cruise vessel**'s design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, manning and casualty reporting have preemptive effect under existing U.S. laws and treaties to which the United States is a party.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

[[Page 20775]]

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and

3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Consultation and Coordination With Indian Tribal Governments

This proposed rule will not have tribal implications; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, it is exempt from the consultation requirements of Executive Order 13175. If tribal implications are identified during the comment period we will undertake appropriate consultations with the affected Indian tribal officials.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2-1, paragraph (34)(d), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This proposed regulation would require operators of **cruise** vessels carrying 500 or more passengers in Alaskan waters to document treated sewage and graywater discharges to ensure that they comply with effluent discharge standards. The content of effluent discharges reflects compliant equipment operations. A ``Categorical Exclusion Determination'' is available in the docket where indicated under ADDRESSES.

List of Subjects

Sewage disposal, Vessels, Reporting and record keeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes amending 33 CFR Part 159 as follows:

PART 159--MARINE SANITATION DEVICES

1. The authority citation for part 159 is revised to read as follows:

Authority: 33 U.S.C. 1322(b)(1); 49 CFR 1.45(b) and 1.46(l) and (m). Subpart E also issued under authority of Sec. 1(a)(4), Pub. L. 106-554, 114 Stat. 2763; 49 CFR 1.46(ttt).

2. Subpart E is added to part 159 to read as follows:
Subpart E--Discharge of Effluents in Certain Alaskan Waters by **Cruise Vessel** Operations
Sec.

159.301 Purpose.
159.303 Applicability.
159.305 Definitions.
159.307 Untreated sewage.
159.309 Limitations on discharge of treated sewage or graywater.
159.311 Safety exception.
159.313 Inspection for compliance and enforcement.
159.315 Sewage and graywater discharge record book.
159.317 Sampling and reporting.
159.319 Fecal coliform and total suspended solids standards.
159.321 Enforcement.

Subpart E--Discharge of Effluents in Certain Alaskan Waters by
Cruise Vessel Operations

Sec. 159.301 Purpose.

The purpose of this subpart is to implement ``Title XIV--Certain Alaskan **Cruise Ship** Operations'' contained in Section 1(a)(4) of Public Law 106-554, enacted on December 21, 2000, by prescribing regulations governing the discharges of sewage and graywater from **cruise** vessels, require sampling and testing of sewage and graywater discharges, and establish reporting and record keeping requirements.

Sec. 159.303 Applicability.

This subpart applies to each **cruise vessel** authorized to carry 500 or more passengers operating in the waters of the Alexander Archipelago and the navigable waters of the United States within the State of Alaska and within the Kachemak Bay National Estuarine Research Reserve.

Sec. 159.305 Definitions.

In this subpart:

Administrator--means the Administrator of the United States Environmental Protection Agency.

Applicable waters of Alaska--means the waters of the Alexander Archipelago and the navigable waters of the United States within the State of Alaska and within the Kachemak Bay National Estuarine Research Reserve.

Captain of the Port--means the Captain of the Port as defined in Subpart 3.85 of this chapter.

Conventional pollutants--means the list of pollutants listed in 40 CFR Part 401.16.

Cruise vessel--means a passenger **vessel** as defined in section 2101(22) of Title 46, United States Code. The term does not include a **vessel** of the United States operated by the federal government or a **vessel** owned and operated by the government of a State.

Discharge--means a release, however caused, from a **cruise vessel**, and includes, any escape, disposal, spilling, leaking, pumping, emitting or emptying.

Environmental compliance records--includes the Sewage and Graywater Discharge Record Book, all discharge reports, all discharge sampling test results, as well as any other records that must be kept under this Subpart.

Graywater--means only galley, dishwasher, bath, and laundry waste water. The term does not include other wastes or waste streams.

Navigable waters--has the same meaning as in section 502 of the Federal Water Pollution Control Act, as amended.

Person--means an individual, corporation, partnership, limited liability company, association, state, municipality, commission or political subdivision of a state, or any federally recognized Indian tribal government.

Priority pollutant--means the list of toxic pollutants listed in 40 CFR Part 401.15.

Sewage--means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body waste.

Treated sewage--means sewage meeting all applicable effluent limitation standards and processing requirements of the Federal Water Pollution Control Act, as amended and of Title XIV ``Certain Alaskan **Cruise** Ship Operations'' of Public Law 106-554, and regulations promulgated under either.

Untreated sewage--means sewage that is not treated sewage.

Waters of the Alexander Archipelago--means all waters under the sovereignty of the United States within or near Southeast Alaska, as follows:

(1) Beginning at a point 58 deg.11-44N, 136 deg. 39-25W [near Cape Spencer Light], thence southeasterly along a line three nautical miles seaward of the baseline from which the breadth of the territorial sea is measured in the Pacific Ocean and the Dixon Entrance, except where this line intersects geodesics connecting the following five pairs of points:

58 deg. 05-17 N, 136 deg. 33-49 W and 58 deg. 11-41 N, 136 deg. 39-25 W [Cross Sound]

56 deg. 09-40 N, 134 deg. 40-00 W and 55 deg. 49-15 N, 134 deg. 17-40 W [Chatham Strait]

55 deg. 49-15 N, 134 deg. 17-40 W and 55 deg. 50-30 N, 133 deg. 54-15 W [Sumner Strait]

54 deg. 41-30 N, 132 deg. 01-00 W and 54 deg. 51-30 N, 131 deg. 20-45 W [Clarence Strait]

54 deg. 51-30 N, 131 deg. 20-45 W and 54 deg. 46-15 N, 130 deg. 52-00 W [Revillagigedo Channel]

[[Page 20776]]

(2) The portion of each geodesic in paragraph (1) of this definition situated beyond 3 nautical miles from the baseline from which the breadth of the territorial seas is measured forms the outer limit of the waters of the Alexander Archipelago in those five locations.

Sec. 159.307 Untreated sewage.

No person shall discharge any untreated sewage from a **cruise vessel**

into the applicable waters of Alaska.

Sec. 159.309 Limitations on discharge of treated sewage or graywater.

(a) No person shall discharge treated sewage or graywater from a **cruise vessel** into the applicable waters of Alaska unless:

(1) The **cruise vessel** is underway and proceeding at a speed of not less than six knots;

(2) The **cruise vessel** is not less than one nautical mile from the nearest shore, except in areas designated by the Coast Guard in consultation with the State of Alaska;

(3) The discharge complies with all applicable **cruise vessel** effluent standards established pursuant to P.L. 106-554 and any other applicable law, and

(4) The **cruise vessel** is not in an area where the discharge of treated sewage or graywater is prohibited.

(b) Until such time as the Administrator promulgates regulations addressing effluent quality standards for **cruise** vessels operating in the applicable waters of Alaska, treated sewage and graywater may be discharged from vessels in circumstances otherwise prohibited under paragraphs (a)(1) and (2) of this section provided that:

(1) Notification to the Captain of the Port (COTP) is made not less than 30 days prior to the planned discharge, and such notice includes results of tests showing compliance with this section;

(2) The discharge satisfies the minimum level of effluent quality specified in 40 CFR 133.102;

(3) The geometric mean of the samples from the discharge during any 30-day period does not exceed 20 fecal coliform/100 milliliters (ml) and not more than 10 percent of the samples exceed 40 fecal coliform/100 ml;

(4) Concentrations of total residual chlorine do not exceed 10.0 milligrams per liter (mg/l);

(5) Prior to any such discharge occurring, the owner, operator or master, or other person in charge of a **cruise vessel**, can demonstrate to the COTP that test results from at least five samples taken from the **vessel** representative of the effluent to be discharged, on different days over a 30-day period, conducted in accordance with the guidelines promulgated by the Administrator in 40 CFR Part 136, which confirm that the water quality of the effluents proposed for discharge is in compliance with paragraphs (b)(2), (3) and (4) of this section; and

(6) To the extent not otherwise being done by the owner, operator, master or other person in charge of a **cruise vessel**, pursuant to Sec. 159.317 of this subpart, the owner, operator, master or other person in charge of a **cruise vessel** shall demonstrate continued compliance through sampling and testing for conventional pollutants and residual chlorine of all treated sewage and graywater effluents periodically as determined by the COTP.

Sec. 159.311 Safety exception.

The regulations in this subpart shall not apply to discharges made for the purpose of securing the safety of the **cruise vessel** or saving life at sea, provided that all reasonable precautions have been taken for the purpose of preventing or minimizing the discharge.

Sec. 159.313 Inspection for compliance and enforcement.

(a) **Cruise** vessels operating within the applicable waters of Alaska are subject to inspection by the Coast Guard to ensure compliance with this subpart.

(b) An inspection under this section shall include an examination of the Sewage and Graywater Discharge Record Book required under Sec. 159.315 of this subpart, environmental compliance records, and a general examination of the **vessel**. A copy of any entry in the Sewage and Graywater Discharge Record Book may be made and the Master of the **vessel** may be required to certify that the copy is a true copy of the original entry.

(c) A **vessel** not in compliance with this subpart may be subject to the penalties set out in Sec. 159.321, denied entry into the applicable waters of Alaska, detained, or restricted in its operations by order of the COTP.

Sec. 159.315 Sewage and Graywater Discharge Record Book.

(a) While operating in the applicable waters of Alaska each **cruise vessel** shall maintain, in English, a legible Sewage and Graywater Discharge Record Book with the **vessel**'s name and official number listed on the front cover and at the top of each page.

(b) Entries shall be made in the Sewage and Graywater Discharge Record Book whenever any of the following is released into the applicable waters of Alaska:

- (1) Sewage;
- (2) Graywater; or
- (3) Sewage and graywater mixture.

(c) Each entry in the Sewage and Graywater Discharge Record Book shall, at a minimum, contain the following information in the order specified:

- (1) Name and location of each discharge port within the ship;
- (2) Date the start of discharge occurred;
- (3) Whether the effluent is sewage, graywater, or a sewage and graywater mixture;
- (4) Time discharge port is opened;
- (5) **Vessel**'s latitude and longitude at the time the discharge port is opened;
- (6) Volume discharged in cubic meters;
- (7) Flow rate of discharge in liters per minute;
- (8) Time discharge port is secured;
- (9) **Vessel**'s latitude and longitude at the time the discharge port is secured; and
- (10) **Vessel**'s minimum speed during discharge.

(d) In the event of an emergency, accidental or other exceptional discharge of sewage or graywater, a statement shall be made in the Sewage and Graywater Discharge Record Book of the circumstances, and the reasons for, the discharge and an immediate notification of the discharge shall be made to the COTP.

(e) Each entry of a discharge shall be recorded without delay and signed and dated by the person or persons in charge of the discharge concerned and each completed page shall be signed and dated by the

master or other person having charge of the ship.

(f) The Sewage and Graywater Discharge Record Book shall be kept in such a place as to be readily available for inspection at all reasonable times and shall be kept on board the ship.

(g) The master or other person having charge of a ship required to keep a Sewage and Graywater Discharge Record Book shall be responsible for the maintenance of such record.

(h) The Sewage and Graywater Discharge Record Book shall be maintained on board for not less than three years.

Sec. 159.317 Sampling and reporting.

(a) The owner, operator, master or other person in charge of a **cruise vessel** that discharges treated sewage and/or graywater in the applicable waters of Alaska shall;

(1) Not less than 90 days prior to each **vessel's** initial entry into the applicable waters of Alaska during any calendar year, provide to the COTP a Quality Assurance/Quality Control Plan (QA/

[[Page 20777]]

QCP) and **Vessel** Specific Sampling Plan (VSSP) for review and acceptance;

(2) Not less than 30 days nor more than 120 days prior to each **vessel's** initial entry into the applicable waters of Alaska during any calendar year, provide a certification to the COTP that the **vessel's** treated sewage and graywater effluents meet the minimum standards established by the Administrator, or in the absence of such standards, meet the minimum established in Sec. 159.319 of this subpart;

(3) Within 30 days of each **vessel's** initial entry into the applicable waters of Alaska during any calendar year undergo sampling and testing for conventional pollutants of all treated sewage and graywater effluents as directed by the COTP;

(4) While operating in the applicable waters of Alaska be subject to unannounced sampling of treated sewage and graywater discharge effluents, or combined treated sewage/graywater discharge effluents for the purpose of testing for a limited suite, as determined by the Coast Guard, of priority pollutants;

(5) While operating in the applicable waters of Alaska be subject to additional random sampling events, in addition to all other required sampling, of some or all treated sewage and graywater discharge effluents for conventional and/or priority pollutant testing as directed by the COTP;

(6) Ensure all samples, as required by this section, are collected and tested by a laboratory accepted by the Coast Guard for the testing of conventional and priority pollutants, as defined by this subpart, and in accordance with the **cruise vessel's** Coast Guard accepted QA/QCP and VSSP;

(7) Pay all costs associated with development of an acceptable QA/QCP and VSSP, sampling and testing of effluents, reporting of results, and any additional environmental record keeping as required by this subpart, not to include cost of federal regulatory oversight.

(b) A QA/QCP must, at a minimum include:

(1) Sampling techniques and equipment, sampling preservation

methods and holding times, and transportation protocols, including chain of custody;

(2) Laboratory analytical information including methods used, calibration, detection limits, and the laboratory's internal QA/QC procedures;

(3) Quality assurance audits used to determine the effectiveness of the QA program; and

(4) Procedures and deliverables for data validation used to assess data precision and accuracy, the representative nature of the samples drawn, comparability, and completeness of measure parameters.

(c) A VSSP is a working document used during the sampling events required under this section and must, at a minimum, include:

(1) **Vessel** name;

(2) Passenger and crew capacity of the **vessel**;

(3) Daily water use of the **vessel**;

(4) Holding tank capacities for treated sewage and graywater;

(5) **Vessel** schematic of discharge ports and corresponding sampling ports;

(6) Description of discharges; and

(7) A table documenting the type of discharge, type of sample drawn (grab or composite), parameters (conventional or priority pollutants), **vessel** location when sample drawn, date and time of the sampling event.

(d) Test results for conventional pollutants shall be submitted within 15 calendar days of the date the sample was collected, and for priority pollutants within 30 calendar days of the date the sample was collected, to the COTP directly by the laboratory conducting the testing and in accordance with the Coast Guard accepted QA/QCP.

(e) Samples collected for analysis under this subpart shall be held by the laboratory contracted to do the analysis for not less than six months, or as directed by the COTP.

(f) Reports required under this section may be written or electronic. If electronic, the reports must be in a format readable by Coast Guard and Alaska Department of Environmental Conservation data systems.

Sec. 159.319 Fecal coliform and total suspended solids standards.

(a) Treated sewage effluent discharges--Until such time as the Administrator promulgates effluent discharge standards for treated sewage, treated sewage effluent discharges in the applicable waters of Alaska shall not have a fecal coliform bacterial count of greater than 200 per 100 ml nor total suspended solids greater than 150 mg/l.

(b) Graywater effluent discharges [Reserved.]

Sec. 159.321 Enforcement.

(a) Administrative penalties.

(1) Violations. Any person who violates this subpart may be assessed a class I or class II civil penalty by the Secretary or his delegatee.

(2) Classes of penalties.

(i) Class I. The amount of a class I civil penalty under this section may not exceed \$10,000 per violation, except that the maximum amount of any class I civil penalty under this section shall not exceed

\$25,000. Before assessing a civil penalty under this subparagraph, the Secretary or his delegatee shall give to the person to be assessed such penalty written notice of the Secretary's proposal to assess the penalty and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed penalty. Such hearing shall not be subject to 5 U.S.C. 554 or 556, but shall provide a reasonable opportunity to be heard and to present evidence.

(ii) Class II. The amount of a class II civil penalty under this section may not exceed \$10,000 per day for each day during which the violation continues, except that the maximum amount of any class II civil penalty under this section shall not exceed \$125,000. Except as otherwise provided in this paragraph, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions as in the case of civil penalties assessed and collected after notice and an opportunity for hearing on the record in accordance with 5 U.S.C. 554.

(3) Rights of interested persons.

(i) Public notice. Before issuing an order assessing a class II civil penalty under this paragraph, the Secretary shall provide public notice of and reasonable opportunity to comment on the proposed issuance of each order.

(ii) Presentation of evidence. Any person who comments on a proposed assessment of a class II civil penalty under this section shall be given notice of any hearing held under this paragraph and of the order assessing such penalty. In any hearing held under this paragraph (a)(3), such person shall have a reasonable opportunity to be heard and present evidence.

(iii) Rights of interested persons to a hearing. If no hearing is held under paragraph (a)(2) before issuance of an order assessing a class II civil penalty under this section, any person who commented on the proposed assessment may petition, within 30 days after the issuance of such an order, the Secretary or his delegatee to set aside such order and provide a hearing on the penalty. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Secretary, or his delegatee, shall immediately set aside such order and provide a hearing in accordance with paragraph (a)(2)(ii) of this section. If the Secretary or his delegatee denies a hearing under this clause, the Secretary or his delegatee shall provide to the petitioner and

[[Page 20778]]

publish in the Federal Register notice of and the reasons for such denial.

(b) Civil judicial penalties.

(1) Generally. Any person who violates this subpart shall be subject to a civil penalty not to exceed \$25,000 per day for each violation. Each day a violation continues constitutes a separate violation.

(2) Limitation. A person is not liable for a civil judicial penalty under this paragraph for a violation if the person has been assessed a civil administrative penalty under paragraph (a) of this section for the violation.

(c) Determination of amount. In determining the amount of a civil

penalty under paragraphs (a) or (b) of this section, the court or the Secretary or his delegatee shall consider the seriousness of the violation, any history of such violations, any good-faith efforts to comply with applicable requirements, the economic impact of the penalty on the violator, and other such matters as justice may require.

(d) Criminal Penalties.

(1) Negligent violations. Any person who negligently violates this subpart commits a Class A misdemeanor.

(2) Knowing violations. Any person who knowingly violates this subpart commits a Class D felony.

(3) False Statements. Any person who knowingly makes any false statement, representation, or certification in any record, report or other document filed or required to be maintained under this subpart, or who falsifies, tampers with, or knowingly renders inaccurate any testing or monitoring device or method required to be maintained under this subpart commits a Class D felony.

(e) Awards.

(1) The Secretary or his delegatee or the court, when assessing any fines or civil penalties, as the case may be, may pay from any fines or civil penalties collected under this section an amount not to exceed one-half of the penalty or fine collected to any individual who furnished information which leads to the payment of the penalty or fine. If several individuals provide such information, the amount shall be divided equitably among such individuals. No officer or employee of the United States, the State of Alaska or any Federally recognized Tribe who furnishes information or renders service in the performance of his or her official duties shall be eligible for payment under this paragraph (e)(1).

(2) The Secretary, his delegatee, or a court, when assessing any fines or civil penalties, as the case may be, may pay, from any fines or civil penalties collected under this section, to the State of Alaska or any Federally recognized Tribe providing information or investigative assistance which leads to payment of the penalty or fine, an amount which reflects the level of information or investigative assistance provided. Should the State of Alaska or a Federally recognized Tribe and an individual under paragraph (e)(1) of this section be eligible for an award, the Secretary, his delegatee, or the court, as the case may be, shall divide the amount equitably.

(f) Liability in rem. A **cruise vessel** operated in violation of this subpart is liable in rem for any fine imposed under paragraph (c) of this section or for any civil penalty imposed under paragraphs (a) or (b) of this section, and may be proceeded against in the United States district court of any district in which the **cruise vessel** may be found.

Dated: April 18, 2001.

J.V. O'Shea,
Captain, U.S. Coast Guard, Acting Commander, Seventeenth Coast Guard District.

[FR Doc. 01-10140 Filed 4-24-01; 8:45 am]

BILLING CODE 4910-15-P